

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 792

Introduced by Assembly Member Duvall

February 26, 2009

An act to amend ~~Section 17514~~ *Sections 17514 and 17592* of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 792, as amended, Duvall. Business: mail solicitations.

Existing law requires a person who sends a solicitation by mail soliciting the recipient to *consent* to receive information by telephone to disclose specified information, including, without limitation, the telephone number to which calls are to be placed.

This bill would ~~require the person to disclose additional telephone numbers, if applicable~~; *permit the solicitor to comply with this requirement by providing a space on the mail solicitation for the consumer to provide his or her telephone number to the sender of the mailing.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17514 of the Business and Professions
- 2 Code is amended to read:
- 3 17514. (a) A person who sends a solicitation by mail that
- 4 solicits a recipient to consent to receive information via telephone,
- 5 where that recipient's telephone number is not listed on the national

1 “do not call” registry established and maintained by the Federal
2 Trade Commission, as described in Section 310.4(b)(1)(iii)(B) of
3 Title 16 of the Code of Federal Regulations, shall include in the
4 solicitation a clear and conspicuous disclosure of the following
5 information:

6 (1) Identification of the name of the sender of the mailing and
7 of the entity that is requesting permission to call.

8 (2) The telephone number ~~or numbers~~ to which calls are to be
9 placed. *The solicitor may comply with this paragraph by providing*
10 *a space on the mail solicitation for the consumer to provide his or*
11 *her telephone number to the sender of the mailing.*

12 (3) Notice that the recipient may be contacted by a telephone
13 solicitor.

14 (b) A violation of this section shall not be a crime,
15 notwithstanding Section 17534. However, all available civil
16 remedies that are applicable to a violation of this section may be
17 employed.

18 *SEC. 2. Section 17592 of the Business and Professions Code*
19 *is amended to read:*

20 17592. (a) For purposes of this article:

21 (1) A “telephone solicitor” means any person or entity who, on
22 his or her own behalf or through salespersons or agents, announcing
23 devices, or otherwise, makes or causes a telephone call to be made
24 to a California telephone number that does any of the following:

25 (A) Seeks to offer a prize or to rent, sell, exchange, promote,
26 gift, or lease goods or services or documents that can be used to
27 obtain goods or services.

28 (B) Offers or solicits or seeks to offer or solicit any extension
29 of credit for personal, family, or household purposes.

30 (C) Seeks marketing information that will or may be used for
31 the direct solicitation of a sale of goods or services to the
32 subscriber.

33 (D) Seeks to sell or promote any investment, insurance, or
34 financial services.

35 (E) Seeks to make any telephone solicitation or attempted
36 telephone solicitation as described in Section 17511.1.

37 (2) “Do not call” list means the California telephone numbers
38 on the national “do not call” registry established and maintained
39 by the Federal Trade Commission, as described in Section
40 310.4(b)(1)(iii)(B) of Title 16 of the Code of Federal Regulations.

1 A “do not call” list is current if it was obtained from the Federal
2 Trade Commission no more than three months prior to the date a
3 call is made.

4 (b) A person or entity does not necessarily qualify as a telephone
5 solicitor if the products or services of the person or entity are sold
6 or marketed by an independent contractor whose business practices
7 are not controlled by the person or entity.

8 (c) Except for telephone calls described in subdivision (e),
9 beginning on the 31st day after the Federal Trade Commission
10 makes its first “do not call” list available to telephone solicitors,
11 no telephone solicitor shall call any telephone number on the then
12 current “do not call” list and do any of the following:

13 (1) Seek to offer a prize or to rent, sell, exchange, promote, gift,
14 or lease goods or services or documents that can be used to obtain
15 goods or services.

16 (2) Offer or solicit or seek to offer or solicit any extension of
17 credit for personal, family, or household purposes.

18 (3) Seek marketing information that will or may be used for the
19 direct solicitation of a sale of goods or services to the subscriber.

20 (4) Seek to sell or promote any investment, insurance, or
21 financial services.

22 (5) Seek to make any telephone solicitation or attempted
23 telephone solicitation as described in Section 17511.1.

24 (d) No person or entity that sells, leases, exchanges, or rents
25 telephone solicitation lists shall include in those lists those
26 telephone numbers that appear on the current “do not call” list,
27 except that this subdivision does not apply to lists used for directory
28 assistance and numbers published in telephone directories that list
29 substantially all publicly available telephone numbers in a specific
30 geographic area.

31 (e) Subdivision (c) shall not apply to any of the following:

32 (1) Telephone calls made pursuant to the express agreement, in
33 writing, of the subscriber to place calls to that California telephone
34 number. This written agreement shall clearly evidence the person’s
35 authorization that calls made by or on behalf of a specific party
36 may be placed to that California telephone number, and shall
37 include the signature of that person. In any dispute regarding
38 whether a subscriber has provided this express written permission,
39 the telephone solicitor has the burden of proving that the subscriber
40 has provided this permission by producing the original or a

1 facsimile document, signed by the subscriber, evidencing that
2 permission; or an advertisement by the subscriber. “Express
3 agreement” does not include any consent or permission included
4 in any contract of adhesion.

5 (2) Telephone calls made pursuant to the express request of the
6 subscriber. “Express request” may include a telephone call from
7 a person or entity who has been provided the subscriber’s telephone
8 number and name as a referral from a solicitor with which the
9 subscriber has an established business relationship, if that solicitor
10 has obtained the subscriber’s express request for the referral.
11 “Express request” does not include any consent or permission
12 included in any contract of adhesion. A telephone call is presumed
13 not to be made at the express request of a subscriber if one of the
14 following occurs, as applicable:

15 (A) The call is made 30 business days after the last date on
16 which the subscriber contacted a business with the purpose of
17 inquiring about the potential purchase of goods or services.

18 (B) The call is made 30 business days after the last date on
19 which the subscriber consented to be contacted.

20 (C) The call is made after the subscriber has requested that no
21 further telephone calls be made to him or her.

22 (D) The call is made 30 business days after a product or service
23 becomes available where the subscriber has made a request to the
24 business for that product or service that is not then available, and
25 requests a call when the product or service becomes available.

26 (3) Telephone calls made in connection with the collection of
27 a debt or the offer by a creditor to the subscriber of an extension
28 of credit to pay a delinquent obligation owed by the subscriber to
29 that creditor.

30 (4) Telephone calls made to a subscriber if the telephone
31 solicitor has an established business relationship with the
32 subscriber. As used in this article, “established business
33 relationship” means a relationship between a seller and a subscriber
34 based on the subscriber’s purchase, rental, or lease of the seller’s
35 goods or services or a financial transaction between the consumer
36 and seller, within the 18 months immediately preceding the date
37 of a telemarketing call. If a subscriber purchases or obtains a
38 product or service through a licensed agent or broker, for purposes
39 of this article an established business relationship is created with
40 the licensed agent or broker individually, apart from and in addition

1 to, any established business relationship that may have been created
2 by a licensed agent or broker acting on behalf of another, and the
3 licensed agent or broker is a telephone solicitor, as defined in
4 subdivision (a). Notwithstanding the provisions of this paragraph,
5 an established business relationship does not exist between the
6 subscriber and any separate legal entity associated with the
7 telephone solicitor not acting as an agent or vendor on behalf of
8 the telephone solicitor, as defined in subdivision (a), unless the
9 separate legal entity shares the brand name of a business with
10 which the subscriber has an otherwise established business
11 relationship. If the subscriber instructs the telephone solicitor to
12 place the subscriber on the telephone solicitor's list pursuant to
13 Section 64.1200 of Title 47 of the Code of Federal Regulations
14 and Section 310.4(b)(1)(iii)(A) of Title 16 of the Code of Federal
15 Regulations, that instruction shall be binding on the entity with
16 which the subscriber has the established business relationship,
17 with any entity that has the shared brand name, and all other entities
18 that share that brand name, none of whom may initiate further
19 telephone solicitation calls to that subscriber. Separate legal entities
20 include, but are not limited to, any parent company or entity, any
21 subsidiary company or entity, any partnership or copartner, any
22 joint venture or venturer, association member, or comember, or
23 any affiliated company or entity.

24 (5) Telephone calls made by an individual businessperson or a
25 small business if the individual businessperson or small business
26 employs no more than five full- or part-time employees or
27 independent contractors, the individual businessperson or a
28 principal of the small business makes the telephone calls himself
29 or herself for the sale of goods or services offered by that individual
30 businessperson or small business, and the telephone calls are made
31 to subscribers within a 50-mile radius of the location of the
32 individual businessperson or small business. For purposes of this
33 section, the services offered by the individual businessperson or
34 small business cannot be telemarketing services. For purposes of
35 this section, those independent contractors and employees with
36 whom an individual businessperson or a small business is required
37 to have a written independent contractor or employment agreement
38 pursuant to a regulatory scheme to ensure regulatory accountability
39 of those independent contractors or employees, are not counted
40 against the total referenced above.

1 (6) A telephone call made solely to verify that a subscriber, and
2 not an unauthorized third party, has terminated an established
3 business relationship.

4 (7) Telephone calls made by a tax-exempt charitable
5 organization.

6 (8) A telephone call made for the purpose of soliciting a
7 donation without the purchase of goods or services.

8 (f) (1) Nothing in this section prohibits a telephone solicitor
9 from contacting by mail a subscriber whose telephone number
10 appears on the “do not call” list to obtain the subscriber’s express
11 written permission allowing the telephone solicitor to make the
12 calls described in subdivision (c).

13 (2) An express written permission described in paragraph (1)
14 shall include a clear and conspicuous disclosure of all of the
15 following, except as provided in paragraph (3):

16 (A) Identification of the name of the sender of the mailing and
17 of the entity that is requesting permission to call.

18 (B) The subscriber’s telephone number to which the calls may
19 be placed. *However, if the telephone solicitor does not have the*
20 *subscriber’s telephone number, the solicitor may comply with this*
21 *paragraph by providing a space on the mail solicitation for the*
22 *subscriber to provide his or her telephone number to the sender*
23 *of the mailing.*

24 (C) The signature of the subscriber authorizing the call.

25 (D) Notice that the subscriber may be contacted by a telephone
26 solicitor or someone calling on behalf of the specific party
27 identified in the request for permission, even if the subscriber’s
28 telephone number is listed on the federal “do not call” registry.

29 (3) Where there is an established business relationship, as
30 defined under state or federal law, between a subscriber and a
31 telephone solicitor, express written permission described in
32 paragraph (1) is not required.

33 (4) In any dispute regarding whether a subscriber has provided
34 this express written permission, the telephone solicitor has the
35 burden of proving that the subscriber has provided this permission
36 by producing the original or a facsimile document, signed by the
37 subscriber, evidencing that permission.